

COMMISSIONERS PROCEEDINGS
FEBRUARY 17, 2004
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stanton, Pridemore, and Morris, Chair, present.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

BID AWARD 2356

Reconvened a public hearing for Bid Award 2356 – Membrane Covered Frame Structure for Rock Storage. Mike Westerman, General Services, stated that Purchasing and the Jail Work Center were requesting that Bid 2356 be awarded to the lowest bidder. There being no public comment, **MOVED** by Stanton to award Bid 2356 to Western Refinery Services, Inc., of Ferndale, Washington in the total bid amount of \$14,788.07, including Washington State sales tax and to grant authority to the County Administrator to sign all bid-related contracts. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 78)

PUBLIC COMMENT

Speaker #1

Margaret Tweet, Citizen of Camas, commented on the issue of pornography in local libraries. She stated that Vancouver area libraries stock Playboy on shelves, which are easily visible to children, and provide the magazine to minors without parental consent despite public hearings, petitions, and numerous complaints. Ms. Tweet noted that parents have been given copies of a Minors' Access Policy. She further explained. She stated that library systems such as those of Tacoma or Pierce County do not subscribe to Playboy, but our library wasn't willing to consider that option. She also made remarks regarding members of the Library board. Tweet expressed concerns about sex offenders violating their treatment conditions and inappropriate behavior by internet porn surfers in front of children. She said the library and county should do everything possible to prevent the distribution of pornographic materials, e.g. filtering offensive websites. Tweet submitted a packet of related information to the board.

Speaker #2

Mary Falen, [no address provided], commented on the issue of pornographic materials and its availability in our community libraries. She stated that youths can request that Playboy magazines be mailed to them regardless of parental consent. Falen referenced a rape incident that recently occurred in a Philadelphia library – a library that was later honored by Laura Bush. She suggested that if President and Mrs. Bush wish to strengthen today's libraries, they should

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advocate filtering internet access in library communities, as well as strict adherence to the Child Internet Protection Act.

Speaker #3

Pauline Warren, 6800 N.E. 58th Street, Vancouver, spoke in regards to the upcoming library bond issue scheduled for March 9. Ms. Warren said there was no need to hurry and that it would have been more prudent to leave the bond issue for the general election next November. Also, she said it was her understanding that the Library Board has chosen not to send out a notice or voter's guide regarding this election. She further explained. Warren stated that of the \$48 million from the bond issue, only \$9 million would go to East County for a new Cascade Park branch, leaving \$39 million to be devoted for expansion of the downtown library. Warren asked that the board encourage the Library Board to reschedule the election, reduce the size of the bond, and consider another location for a library of a more moderate cost. Lastly, she commented on the issue of safety, particularly at the Vancouver Mall Library.

Speaker #4

Jim Dunn, 12908 N.E. 7th Street, Vancouver, echoed the comments of previous speakers. Mr. Dunn said that hard core and violent pornography has created an environment that jeopardizes the safety and comfort of library users. He stated that during his time as a state legislator and since then, he has reviewed the public records of complaints pertaining to internet pornography. He further explained. He stated that library systems, such as those of Tacoma and Wenatchee, have successfully filtered out internet pornography for all ages and asked why we couldn't do the same. Mr. Dunn stated that he does not support library bond issues because pornography is not being filtered. They need to make pornography unavailable in public institutions.

CONSENT AGENDA

There being no public comment, **MOVED** by Pridemore to approve items 1 through 14. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 78)

[The board agreed to change the order of the agenda to begin with the hearing regarding the Cowlitz Tribe Agreement.]

PUBLIC HEARING: COWLITZ TRIBE AGREEMENT

Held a public hearing to consider adoption of the Cowlitz Tribe Agreement. This hearing was continued from February 10, 2004 for board deliberation. Public comment was closed on February 10th.

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Morris explained that the public record had been closed at the end of the previous hearing and so no more testimony, either oral or written, would be accepted. She asked if it was the pleasure of the board to reverse that decision or to move forward with deliberations.

Stanton said that she was ready to move ahead. She reiterated that public comment had been closed, but noted that they continued to receive written and verbal comments, which she had reviewed.

Pridemore agreed. He stated, for the record, that he had reviewed the videotape of the portion of testimony from the last hearing that he had missed. Pridemore said he felt that they received about as much information regarding this issue as they could possibly get on both sides.

Morris confirmed that there would be no public testimony at this hearing and indicated that they were ready to move forward with discussion. Morris asked Steve Horenstein, Attorney, to provide a completion date for the environmental assessment (EA), which is in the process of being rewritten. Morris also introduced Rich Lowry, Prosecuting Attorney's Office, who is the board's council in regards to land use issues.

Steve Horenstein, Attorney, 500 East Broadway, Suite 400, Vancouver, stated that the EA that had been made available at the previous hearing was an early draft. He said they are in the middle of re-writing it and it should be done by the end of the week or possibly by the first part of the following week. He said the public process is to allow comment on the draft and then they would do a final. He said they hope to be done in the next 10 days or so, at which time they would make it available to the board and then to the public.

Morris clarified that the county and citizens would have a chance to comment on the content of the EA.

Horenstein said that was correct, and those comments would go to the Bureau of Indian Affairs (BIA).

Morris remarked that the county is very protective of the east fork of the Lewis River and that they would remain watchful with regard to stormwater runoff.

Stanton asked Mr. Horenstein to confirm that the tribal governing body has taken the necessary action to have a waiver of sovereign immunity in place.

Horenstein responded that they had brought the signed waiver with them and would provide copies. He stated that it is a limited waiver for purposes of the MOU. He indicated that he would provide copies.

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Morris asked what he meant by “limited.”

Horenstein explained that that sovereign immunity is a very broad doctrine that precludes the application of, in this case, local and state law to the activities of the tribe on the property. On the other hand, he said the MOU provides very broad requirements for the tribe to develop consistent with a number of very strict code provisions. He said there has been a waiver of sovereign immunity to the extent that they are to comply with the provisions of the MOU.

Morris said that would then mean if there is a violation of the conditions of the MOU or environmental codes, the tribe would not be exempt from the same kinds of remedies that the county would pursue if it were a private development.

Dennis Whittlesey, Attorney for the Cowlitz Tribe, 2401 Pennsylvania Avenue NW, Washington D.C., said that waivers of sovereign immunity must be specific otherwise they are invalid. So, they have adopted a formal resolution of limited waiver of sovereign immunity that specifically targets only – but it does target all – issues rising between the county and the tribe under the MOU. Mr. *Horenstein* otherwise very correctly explained what the impact would mean.

Rich Lowry, Prosecuting Attorney’s Office, stated that one of the areas where immunity has not been waived is on actual land use. *Lowry* said the tribe has agreed to be subject to development codes in terms of how development would take place, including critical area ordinances. They have not agreed to be subject to the county’s general land use.

Morris clarified that the tribe would not comply, nor would they grant the county a limited waiver of sovereign immunity on allowed and non-allowed land uses.

Lowry said that was correct and goes to the heart of the GMA issue. Under GMA, the county is obligated to adopt comprehensive plans and development regulations. He said the tribe has not allowed them to impose comprehensive plan designations for land use designations. So in his judgment, GMA is not applicable and nor is the MOU an action for purposes of the state environmental policy act (SEPA). The EA is being done at the federal level; it’s the federal level where actual formal action recognizing the tribe and its reservation would occur.

Pridemore asked if they would do the agreement through a resolution.

Lowry said that was correct.

Samantha Hatch, member of audience, approached the board [most of her comments inaudible]. She asked that the board delay a decision until they can have a full public process.

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Morris stated that this matter has gone through a public process and that they've been discussing it for a very long time. She stated that the attorney for the card rooms, as well as a number of other groups, have had copies of the MOU and have submitted large documents of comments. She said they have tried their best to incorporate what appeared to be relevant into the MOU. It has been very public and the sequence of letters would indicate that many people have known about it. *Morris* said that when it comes close to the time for a decision to be made on any land use item that has come before the board, it's not unusual for there to be an immergence of a group of people who believe they have been left out of the process. She said they always regret when that has happened.

[Inaudible comments from Hatch]

Morris explained that it isn't a land use application that's before the board and that they have different notice requirements for land use applications and for MOU's. *Morris* talked about a number of issues in the MOU that appear to have been misunderstood or not noticed. She referred to the issue of traffic and stated that there are very specific requirements to do all of the road improvements at the intersection and to work with WSDOT. She said they will be paying all fees and in lieu taxes. They are also going to pay a certain percentage of gambling tax on all of their net revenues, including slots, which is not normal in the state of Washington. *Morris* said they will be conforming to land use requirements, e.g. environmental, site plan review, etc. Also, they will be creating a fund to help with problem gambling. There's a contract with the Sheriff's Office so that if the cost to the Sheriff's Office, jails, or courts, for misdemeanants or gross misdemeanants exceeds the amount of money they are paid from the state to provide those services, then the tribe will make up the difference. In regards to the county not negotiating for the City of La Center, *Morris* stated that the county has not negotiated for anybody. For example, the county received requests from both the Fire District and School District, but they were advised that they would have to negotiate on their own. To her knowledge, the City of La Center made no formal request to the county, nor has current leadership for the City of La Center made a request to the tribe. She said they had received a request from the tribe the previous week to negotiate with the City of La Center and hoped those negotiations would proceed promptly.

Unidentified man in the audience stated that no one had answered Ms. Hatch's question regarding a hearing ever taking place in the evenings or on a weekend.

Morris responded that there was no public meeting in the evening or on a Saturday between the Board of County Commissioners and the City of La Center.

Stanton stated that this has been a public process. She said there has been ample opportunity for the public to communicate through voice mail, email, and through public hearings. She said they don't always hold evening hearings, and oftentimes won't hold a hearing regarding a MOU.

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She said the land that the tribe is trying to have put into trust is located in unincorporated Clark County, which means that Clark County has the responsibility to provide services there. She said the board is looking at an agreement that spells out how the tribe intends to develop consistent with county laws, how they will pay for development fees and law enforcement services, comply with all health regulations, make roadway improvements, and make payments in lieu of property taxes – all things they would not be required to do. She said the City of La Center's concern has to do with the impact on their businesses. She said the tribe is working together with the county in order to try and mitigate for impacts. Stanton added that it is the federal government that will decide whether to take the land into trust. She reiterated that what they are dealing with at this hearing is a contract between the tribe and the county to pay for services that the county will be delivering.

Pridemore said it's important that citizens note that it's not the board's role to grant trust status. He said the tribe had asked the board to include a statement in the MOU that would have specified their support of the application; however, the board unanimously and forcefully rejected doing so. He said there are concerns that there is an implied endorsement and support, but he wanted to clarify that he sees no good for the community coming from a trust status. Fortunately, the board has moved forward with a MOU in an attempt to mitigate for the negative aspects. He said he remained very concerned about the zoning and GMA issues because tribal trust status will have a huge impact on the community's ability to plan effectively to manage growth in the future. He said he had very strong concerns about the competitive advantage rendered to the tribe by the federal government on other business in Clark County, and that it's not a level playing field. He also expressed great concerns about the potential for problem gambling associated with casinos. *Pridemore* said he would be more comfortable if they contain within the adopting resolution a clear statement that the MOU is not intended and should not be construed as support for granting tribal trust status or for casino gambling on the site. They are simply trying to mitigate for the impacts of possible tribal trust status.

Morris said she had no objection to Commissioner *Pridemore's* suggestion. She reiterated that they are not endorsing a casino or the tribal trust land process. She said they have written a contract to protect the interests of the Clark County corporate body in the event that it does become tribal land, and in the event a casino is developed. *Morris* said that as far as a leveling the playing field, it's her belief that the state legislature should allow private sector gambling to have slot machines. She said the Board of County Commissioners has not allowed gambling outside of city limits, not in their jurisdiction, and the board had no intention of allowing that to happen.

Stanton said that Commissioner *Pridemore's* suggestion was acceptable to her.

Pridemore said in terms of the specific aspects of the resolution he outlined and their recognition of risks included regarding zoning and GMA, regarding effects on other businesses

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that play by a different set of rules, and the possible effects of casino gambling on the community at large – that those all be stipulated within the adopting resolution.

Morris referenced Commissioner Pridemore's statement about the effects of casino gambling on the community at large. She asked if he would be satisfied with just pointing out that Clark County does not allow gaming.

Pridemore said that would be fine.

Morris suggested they could add that to the cover letter as well.

Lowry clarified that the MOU includes both the primary memorandum – the one with the school district and the one dealing with whether or not with the Interlocal Cooperation Act applies.

Morris added that should the City of La Center arrive at a MOU that they wanted the board to sign, she would be happy to do so.

MOVED by Pridemore to approve the MOU with the attendant supplemental agreements, and with the resolution stipulating to the Board's comments on concerns regarding nonconformity with the Growth Management Act, local land use policies, the board's clear statement of fact that are not endorsing, and with the clear statement of fact that they do not allow gaming of any kind outside of city limits. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 78)

PUBLIC HEARING: COMPREHENSIVE PLAN

Held a public hearing to consider update of the Clark County Comprehensive Plan: Proposed changes to Management Plan text and policies, implementation measures, and Land Division Moratorium.

[TAPE TRANSCRIBED BY RIDER & ASSOCIATES, Tape 79]

2 p.m. Bid Opening

Present at the Bid Opening: Louise Richards, Clerk to the Board; Mike Westerman and Priscilla Ricci, General Services

BID OPENING CRP 320922

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Held a public hearing for Bid Opening CRP 320922 – NE 76th Street Widening Project, from NE 94th Avenue to NE 107th Avenue. Mike Westerman opened and read bids and stated that it was their intention to award Bid CRP 320922 on February 24, 2004, at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 80)

BOARD OF COUNTY COMMISSIONERS

Betty Sue Morris/s/
Betty Sue Morris, Chair

Judie Stanton/s/
Judie Stanton, Commissioner

Craig A. Pridemore, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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